

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:08CV526-MU-02

GEORGE W. BLACKWELL,)	
Plaintiff,)	
)	
v.)	<u>O R D E R</u>
)	
BOYD BENNETT, et al.,)	
Defendants.)	
_____)	

THIS MATTER comes before the Court on Plaintiff's Motion for Voluntary Dismissal, filed February 18, 2009 (document # 32); on Plaintiff and Defendant Yuan's Stipulation of Dismissal with Prejudice, filed March 6, 2009 (document # 38).

Plaintiff initially filed his Complaint in the Superior Court of Burke County; however, this action was removed to this Court by Defendants on November 19, 2008. Since the time of that removal, numerous Motions have been filed by the parties. Most notably, Plaintiff has filed a Motion for Voluntary Dismissal seeking a dismissal without prejudice as to every Defendant except Dr. Yuan. As to Defendant Yuan, Plaintiff stipulates to a dismissal with prejudice. Thus, Plaintiff's action will be dismissed with prejudice as to Defendant Yuan.

Furthermore, the Court carefully has reviewed Plaintiff's Complaint and observed that to the extent he is alleging a claim that Defendants Bennett, Beck, Anderson, Teague and Tony Smith have violated his constitutional rights by failing to award him

with disability-based sentence reduction credits, that claim sounds in habeas and is not cognizable in this civil rights action. Therefore, Plaintiff's third claim also will be dismissed with prejudice as to the Defendants named therein.

Additionally, the Court notes that Plaintiff cannot state a cause of action against Defendant Bennett merely by alleging that he was aware of Plaintiff's efforts to secure additional medical treatment for his complaints of continued medical problems. Therefore, this action will be dismissed with prejudice as to Defendant Bennet.

Finally, pursuant to his Motion, Plaintiff's action will be dismissed without prejudice as to Defendants Paula Smith and Phillip Stover.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Plaintiff's Complaint is **DISMISSED without prejudice** as to Defendants Paula Smith, M.D. and Phillip Stover, M.D.;

2. Plaintiff's Motion for a Voluntary Dismissal and his Stipulation of Dismissal with prejudice as to Defendant Yuan (document ## 31 and 38) is **GRANTED**;

3. Plaintiff's Complaint also is **DISMISSED with prejudice** as to Defendants Bennett, Beck, Anderson, Teague, and Tony Smith;

4. Defendant Smith's Motion for Extension of Time, filed November 20, 2008 (document # 4) is **GRANTED, nunc pro tunc**;

5. Plaintiff's Motion for a Change of Venue, filed December

22, 2008 (document # 16); his Motion for Voluntary Discovery, filed December 22, 2008 (document # 17); former Defendant Yuan's Motion for Protective Order, filed January 7, 2009 (document # 18); Plaintiff's Motion to Amend, filed January 7, 2009 (document # 22); Defendants P. Smith and Stover's Motion for Protective Order, filed January 15, 2009 (document # 25); Plaintiff's Motion for Summary Judgment, filed February 12, 2009 (document # 29); Plaintiff's Motion for Discovery, filed February 12, 2009 (document # 30); Defendants P. Smith and Stover's Motion for Extension of Time to Respond to Plaintiff's Motion for Summary Judgment, filed February 20, 2009 (document # 33); former Defendant Yuan's Motion for Extension of Time to file Response/Reply, filed February 24, 2009 (document # 34); and Defendants P. Smith and Stover's Motion for Summary Judgment, filed April 15, 2009 (document # 39) all are **DISMISSED as moot.**

SO ORDERED.

Signed: October 7, 2009



Graham C. Mullen
United States District Judge

